

**IN THE COURT OF THE ASSTT. SESSIONS JUDGE, BAKSA,**  
**MUSHALPUR**

Sessions Case No.54/20  
U/S 366 (A) IPC

State of Assam

-Versus-

Sri Diganta Bayan  
..... Accused

Present : Shri D.M. Hussain, A.J.S.  
Asstt. Sessions Judge,  
Baksa, Mushalpur

Committed by : Smti Arunima Sonowal, A.J.S  
Ld. S.D.J.M (S), Baksa  
Baksa, Mushalpur

Appearance:

For the State :Dipmoni Boro, Ld. PP., Baksa

For the Accused :Utpal Barman, Ld. Advocate

Charge Framed on : 18-12-2020

Dates of Evidence : 06-01-2021 & 19-01-2021

Date of Argument : 22-01-2021

Date of judgment : 28-01-2021

## **J U D G M E N T**

1. The prosecution case in brief as unfolded from the Ejahar dated 21-10-2020 filed by the informant Jiten Talukdar is that on 20-10-2020 at about 6 p.m the accused Diganta Bayan kidnapped his minor daughter aged about 13 years from near his house at village Bartari under Salbari P.S.

2. The said ejahar was received at Ananda Bazar O.P vide GDE no.319 dated 21-10-2020 and forwarded to Salbari P.S where it was registered as Salbari PS case no.91/20 u/s 366(A) IPC against the accused person Diganta Bayan. After completion of investigation charge sheet no.70/20 dtd. 31-10-20 was filed against accused Sri Diganta Bayan u/s 366(A) IPC.

3. On 01-12-2020, the case was committed by Ld. S.D.J.M(S) Baksa to the court of Hon'ble Sessions Judge, Baksa after complying the provisions of section 207 Cr.P.C. Vide order dated 08-12-2020 of the Hon'ble Sessions Judge, Baksa the case was sent to this court for disposal. Charge was framed u/s 366(A) IPC against accused Diganta Bayan after hearing both the sides. The charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

### **4. POINT FOR DETERMINATION**

*Whether on 20-10-2020 at about 6 p.m at village Bartari under the Salbari P.S the accused induced the victim under the age of 18 years to go from her house with the intent that she may be forced or seduced to illicit intercourse and thereby committed an offence u/s 366(A) IPC?*

### **5. DISCUSSION, DECISION AND REASONS THEREOF:**

During the course of trial, the prosecution in order to substantiate its case examined 7 witnesses. The statement in defense of the accused u/s 313 Cr.P.C. was recorded wherein he took the plea of innocence . The defence declined to adduce evidence. I have heard the

arguments advanced by learned counsels of both sides and also perused the evidence available on record, my findings with reasons are as follows:

6. P.W-1 Sri Jiten Talukdar who is the informant deposed that he knew the accused person. The victim is his daughter. The incident took place about 3 months back. He went for hajira work. When he returned back home he heard that his daughter was missing. He searched for his daughter. Later he came to know that his daughter went to the house of the accused. He filed the Ejahar the next day of the incident. Police brought his daughter and the accused to Ananda Bazar O.P. His daughter was sent to court for recording her statement. His daughter was sent to Mushalpur Civil Hospital for medical examination. His daughter is now residing with him. His daughter is now aged about 13 years. He handed over the birth certificate of his daughter to police.

7. P.W-1 during his cross examination deposed that there was visiting terms with the accused person and prior to the incident his daughter sometimes visited the house of the accused. He admitted that the accused did not kidnap his daughter nor enticed her. He deposed that he does not know the contents of the Ejahar.

8. P.W-2 Sri Dhaneswar Talukdar deposed that the victim is his 'bhatija'. He heard that the victim was missing from her house. The victim is now residing with her father. He does not know anything more about the incident.

9. P.W-3 Sri Ramen Nath deposed that he heard that the victim was missing from her house. Next day of the incident he came to know that the victim went with the accused person. Police recovered the victim. The victim is now residing with her father.

10. P.W-4 Sri Surjya Barman deposed that he heard that the victim eloped about three months back. Police recovered the victim. The victim is now residing with her father. The victim is aged about 13 years.

11. P.W-4 during his cross examination deposed that he does not know from where the victim was recovered and how the victim left her house.

12. P.W-5 who is the victim deposed that the informant Jiten Talukdar is her father. She knew the accused person. Her father filed the case as she went with the accused while she was studying in class V. Diganta took her to the house of his elder sister at Sarthebari where she stayed for one night. Thereafter she along with Diganta came to Nalbari P.S. Thereafter she was brought to Ananda Bazar O.P. Thereafter she was brought to Mushalpur Court for recording her statement. The statement of the victim recorded u/s 164 Crpc has been exhibited as Exhibit 2. The victim admitted that she voluntarily eloped with Diganta and that he did not kidnap her.

13. During cross examination P.W-5 admitted that she had love affair with Diganta Bayan. The house of Diganta is near her house. Earlier also she visited the house of the accused person. She admitted that Diganta Bayan did not force her to come with him. Diganta Bayan did not induce her to come with him. She informed her mother that she was going to roam with Diganta Bayan. Her mother allowed her to go with Diganta Bayan. The accused did not misbehave with her. She admitted that she did not state before police and in her statement recorded u/s 164 Crpc that Diganta took her to the house of his elder sister at Sarthebari and she stayed there for one night. She deposed that there is good relationship and visiting terms between her family and the family of Diganta Bayan.

14. P.W-6 Owaz Ali(I/O) deposed that on 20-10-2020 he was posted as I/C at Ananda Bazar O.P and on that day the informant Jiten Talukdar came to Ananda Bazar O.P and verbally informed that Diganta Bayan had kidnapped his daughter. He informed the O/C of Salbari P.S and he made GDE no.309 dated 20-10-2020 and thereafter he went to the house of Diganta Bayan at Santibazar. He could not trace out the accused and the victim and he was informed by the family members of Diganta Bayan that the victim and the accused had gone to the house

of elder sister of the accused at Barbila near Sarthebari. Thereafter he informed the O/C Salbari P.S and proceeded to Barbila. He did not recover the victim and the accused in the house of elder sister of the accused at Barbila. The elder sister of the accused informed him that the victim and the accused had come to her house but they stayed there only for 2 to 3 hours and left the place. He told the elder sister of the accused to produce the accused and the victim at Ananda Bazar O.P. . On 21-10-2020 the victim and the accused voluntarily appeared at Solmara O.P under Nalbari P.S. The I/C of Solmara O.P informed the O/C Salbari P.S and thereafter police from Ananda Bazar O.P brought the victim and the accused to Ananda Bazar O.P. On 21-10-2020 Jiten Talukdar filed the ejahar at Ananda Bazar O.P which was forwarded to O/C Salbari P.S vide GDE no.319 dated 21-10-2020. The said ejahar was registered as Salbari P.S case no.91/20 dated 21-10-2020 u/s 366(A) IPC. He was endorsed by the O/C Salbari P.S to investigate the case. He forwarded the accused to Mushalpur Court. The victim was sent to Civil Hospital, Mushalpur for her medical examination. The victim was sent to Mushalpur Court for recording her statement u/s 164 CrPc. He visited the P.O on 21-10-2020 at Bartari village. He drew sketch map and recorded the statement of witnesses. The informant produced original birth certificate of the victim but he returned the same to the informant retaining a xerox copy of the said birth certificate in the case diary. The sketch map has been exhibited as Exhibit 3 and the seizure list has been exhibited as Exhibit 4. He collected the medical report of the victim on 28-10-2020. After completing the pre-step of investigation he handed over the case diary to the O/C Salbari P.s

15. During cross examination P.W-6 deposed that he did not record the statement of the elder sister of the accused at Barbila in Sarthebari. He did not visit the Solmara O.P nor recorded the statement of any police personnel of the said O.P in connection with this case. He did not visit the issuing authority of the birth certificate nor recorded the statement of any official of issuing authority. He did not investigate regarding the genuineness of original birth certificate that was

produced by the informant. He admitted that the extract copy of GDE no.309 dated 20-10-2020 available in the case diary is not certified.

16. P.W-7 Siddheswar Boro deposed that on 21-10-2020 he was posted as O/C Salbari P.S. On that day one ejahar which was forwarded from Ananda Bazar O.P was received and registered as Salbari P.S case no.91/2020 dated 21-10-2020, u/s 366(A) IPC. The I/C of Ananda Bazar O.P A.S.I Owaz Ali was endorsed to investigate the case. Prior to registration of the FIR the ASI of Ananda Bazar O.P had made inquiry in connection with the case vide GDE no.309 dated 20-10-2020. The informant of this case visited the Ananda Bazar O.P on 20-10-2020 and verbally informed the I/c that his daughter who was studying in class-V was missing and he was informed over phone by the I/C Ananda Bazar O.P and he verbally instructed him over phone to take serious note of the case and recover the victim as the victim was minor. He collected the mobile number of the informant and talked with him over phone. The I/C of Ananda Bazar O.P after completion of investigation submitted the case diary on 28-10-2020. On 31-10-2020 he submitted charge-sheet against the accused Diganta Bayan u/s 366(A) IPC. The charge-sheet has been exhibited as Exhibit 5.

17. Section 366 (A) IPC provides - Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

18. It appears that the victim in her statement recorded under 164 Cr.P.C. stated that she had love affair with Diganta Bayan for the last one year and on 20/10/2020 she called Diganta over phone and eloped with him .

19. It appears that PW-1 who is the informant admitted that the accused did not kidnap his daughter nor enticed her. P.W-2 deposed that he only heard that the victim was missing from her house. P.W-3 deposed that the victim went with the accused person. P.W-4 deposed

that the victim eloped with the accused person. P.W-5 who is the victim admitted that she voluntarily eloped with the accused and that the accused had not kidnap her. During cross examination P.W-5 deposed that the accused did not force nor induced her to come with him.

20. The victim has stated her age to be 13 years but the prosecution has not exhibited any document to prove the age of the victim. There is no evidence to show that the accused forcefully compelled or by any deceitful means induced the victim to go from any place. There is also no evidence that the accused took or enticed the victim out of the keeping of her lawful guardian. It appears that the victim went with the accused on her free will and consent.

21. On appreciation of the testimony of witnesses and the materials available on record, I find that the prosecution has failed to establish the essential ingredients so required to constitute the charged offence beyond all reasonable doubt.

22. The accused person namely Diganta Bayan is found not guilty u/s 366 (A) I.P.C and hence, acquitted and be set at liberty forthwith. The bail bond stands extended for a further period of six months. Let a copy of the judgment be forwarded to the District Magistrate, Baksa as per section 365 Crpc.

Given under my hand and seal of this court on this 28<sup>th</sup> day of January, 2021.

Asstt. Sessions Judge  
Baksa, Mushalpur

Dictated & Corrected by me

Asstt. Sessions Judge  
Baksa, Mushalpur

**APPENDIX**

**Prosecution Witnesses:**

PW-1-Sri Jiten Talukdar (informant)  
PW-2-Sri Dhaneswar Talukdar  
PW-3-Sri Ramen Nath  
PW-4-Surjya Barman  
P.W-5-victim(name withheld)  
PW-6-Owaz Ali(I/O)  
PW-7-Siddheswar Boro (O/C, Salbari P.S)

**Prosecution Exhibits:**

Ext.1-Ejahaar.  
Ext.1(1)-Signature of the informant.  
Ext.2-Statement of the victim u/s 164 Cr.PC.  
Ext.2(1) & 2(2)-Signatures of the victim.  
Ext.3-Sketch Map.  
Ext.3(1)-Signature of I/O.  
Ext.4-Seizure list.  
Ext.4(1)-Signature of I/O.  
Ext.5-Charge-sheet.  
Ext.5(1) is the signature of O/C, Salbari P.S.

**Defence witnesses:**

Nil

**Defence exhibits:**

Nil

Asstt. Sessions Judge,  
Baksa, Mushalpur